

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALI MOHAMMED SAIED AHMED;
AMANDA MAE THOMPSON;
BABAK MOSTAFAVINASSAB;
DEBRA ANN YOST; and LIONEL
GONZALES,

Plaintiffs,

C14-926 TSZ

V.

MINUTE ORDER

CAROLYN W. COLVIN, Acting
Commissioner of the Social Security
Administration,

Defendant.

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Defendant's motion to dismiss, docket no. 17, is GRANTED in part with prejudice, GRANTED in part without prejudice, and STRICKEN in part as follows:

(a) With regard to Counts I through IV of the Amended Complaint, defendant's Rule 12(b)(1) motion is GRANTED, and defendant's alternative Rule 12(b)(6) motion is STRICKEN as moot. Counts I through IV of the Amended Complaint, docket no. 11, are DISMISSED with prejudice for lack of jurisdiction. See 42 U.S.C. §§ 405(h) & 1383(c)(3); Weinberger v. Salfi, 422 U.S. 749, 760-61 (1975); see also 5 U.S.C. § 701(a)(1); Mich. Ass'n of Homes & Servs. for the Aging, Inc. v. Shalala, 127 F.3d 496, 499 (6th Cir. 1997) (citing Heckler v. Ringer, 466 U.S. 602, 622 (1984)).

(b) With regard to Count V of the Amended Complaint, defendant's Rule 12(b)(1) motion is GRANTED without prejudice. At the time this action was commenced, no "final decision" had been issued by defendant Carolyn W. Colvin, Acting Commissioner of the Social Security Administration ("Commissioner"), with respect to any plaintiff's applications for social security disability insurance

1 benefits and supplemental security income (“SSI”) payments under Titles II and
 2 XVI, respectively, of the Social Security Act. Plaintiff Ali Mohammed Saied
 3 Ahmed successfully sought review by the Appeals Council and his matter has
 4 been remanded to Administrative Law Judge (“ALJ”) Tom Morris for further
 5 proceedings. Plaintiff Lionel Gonzales’s request for review is still before the
 6 Appeals Council. Neither Ahmed’s nor Gonzales’s claims under Count V, which
 7 are brought under 42 U.S.C. §§ 405(g) & 1383(c)(3), are ripe. Unlike in *Johnson*
 8 *v. Shalala*, 2 F.3d 918 (9th Cir. 1993), and other cases in which exhaustion of
 9 administrative remedies has been excused, in this case, plaintiffs do not challenge
 10 an unlawful regulation, policy, or systemic practice, but rather the ability of a
 11 single ALJ to be fair. Instead of being collateral, plaintiffs’ claims of bias are
 12 “bound up with,” *see id.* at 922, the merits of their claims for disability and SSI
 13 benefits, and the risk of not succeeding on a bias claim before the agency does not
 render the effort futile. Ahmed’s and Gonzales’s claims under Count V are
 DISMISSED without prejudice for failure to exhaust. *See Kildare v. Saenz*, 325
 F.3d 1078 (9th Cir. 2003). Plaintiffs Babak Mostafavinassab and Debra Ann Yost
 have now received “final decisions” from the Commissioner and have each
 commenced a new action, *see* Case Nos. C15-1280 and C15-1279. Their claims
 under Count V in this matter are likewise DISMISSED without prejudice, and
 they may proceed forward in their recently filed cases. According to counsel, a
 “final decision” has been issued with respect to plaintiff Amanda Mae Thompson,
 but she has not initiated a separate action and the operative pleading does not
 contain the allegations necessary to establish the Court’s jurisdiction. As to
 Thompson, the Amended Complaint is DISMISSED without prejudice and with
 leave to amend.

14 (c) As to Ahmed, Gonzales, Mostafavinassab, and Yost, defendant’s
 15 alternative Rule 12(b)(6) motion to dismiss Count V of the Amended Complaint is
 16 STRICKEN as moot. With respect to Thompson, defendant’s Rule 12(b)(6)
 17 motion is STRICKEN without prejudice to renewing the motion after Thompson
 files an amended pleading. Any such Second Amended Complaint shall be
 electronically filed within fourteen (14) days of the date of this Minute Order.

18 (2) The Clerk is directed to send a copy of this Minute Order to all counsel of
 record.

19 Dated this 21st day of August, 2015.

20 William M. McCool

21 Clerk

22 s/Karen Dews

23 Deputy Clerk